



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Brian L. Moore

Serial No.: 10/673,878

Filed: September 29, 2003

For: THEME-BASED CARD GAMES
HAVING SUBJECTIVE SCORING
CRITERIA

Confirmation No.: 2340

Examiner: K. Fernstrom

Group Art Unit: 3712

Attorney Docket No.: 3117-6093US

Notice of Allowance Mailed:

June 8, 2004

Express Mail Mailing Label No.: EL 994828977 US

Date of Deposit with USPS: September 2, 2004

Person making Deposit: Christopher Haughton

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This communication is filed in response to the Notice of Allowability mailed June 8, 2004. The purpose of this communication is to set forth Applicant's comments, pursuant to 37 C.F.R. §1.104(e), on the Examiner's Statement of Reasons for Allowance accompanying the Notice of Allowability.

REMARKS

The Examiner indicates:

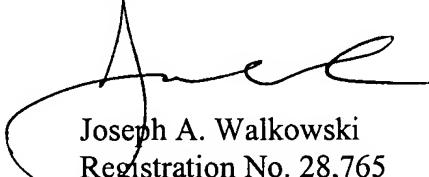
The prior art fails to disclose or suggest a method of playing a card game having all of the limitations of claims 1. While the claimed method bears some similarity to the popular card game War, steps pertaining to a subjective, rather than qualitative, comparison of the indicia on the cards are not disclosed or suggested by the prior art. Kenney discloses one game method which resembles War, but awards points based on objective criteria, rather than allowing players to express subjective opinions to determine gameplay. Simmons discloses a card game where players express subjective opinions pertaining to themes represented on the cards. However, there is no suggestion or motivation to combine the teachings of Simmons with those of Kenney or similar competitive games to produce the claimed invention without using impermissible hindsight. Along similar lines, Kirby discloses a game method where cards are subjectively evaluated to determine a “best matchup” for a pair of cards, but there is no suggestion in Kirby of a subjective determination of a “best card” among a plurality of cards in a competitive game. As a result, the claimed method is patentable over the prior art.

Also, methods involving subjective determinations by the user or users often raise questions of whether the subject matter is statutory under 35 USC 101, or adequately enabled under 35 USC 112. In this instance, the claims are patentable. One of ordinary skill, upon reading the claims and the specification, would understand how to perform the method and how the subjective evaluations are performed. Claim 1 recites that images relating to a particular theme, such as sports players, are presented on the cards. These images present some basis for the players to formulate a subjective opinion about their preferences. Claim 1 also recites that a nonplayer may offer a subjective opinion about the “best card” in the event that a majority of the players do not agree subjectively. The claimed method creates a useful, concrete and tangible result, which can be performed without undue experimentation, and thus is patentable under 35 USC 101 and 112. As a result, claim 1, and all claims dependent therefrom, are allowed.

Applicants concur with the reasons as stated by the Examiner insofar as they comprise a summary, and are exemplary and not limiting. However, independent claim 1 as allowed includes other and different language than that specified by the Examiner, and the allowed dependent claims include other and further features and elements. Accordingly, the scope of the claims must be determined from the literal language of each as a whole, as well as equivalents thereof.

Therefore, to the extent that the Examiner's reasons for allowance as stated are not relevant to, or wholly encompassing of, a particular claim, independent or dependent, Applicant assumes that (pursuant to 37 C.F.R. § 1.104(e)) the Examiner has determined that the record of the prosecution as a whole of the application makes clear the reasons for allowing those claims. Further, it appears, pursuant to M.P.E.P. 1302.14, that the Examiner's statement of reasons for allowance is not intended to encompass all of the reasons for allowance.

Respectfully submitted,



Joseph A. Walkowski
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TRASKBRITT
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Salt Lake City, Utah 84110-2550
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Date: September 2, 2004

JAWW/nj:lb

Document in ProLaw



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Sir:

Applicant submits herewith Part B - Fee(s) Transmittal for the above-captioned application and a check in the amount of \$995.00 in payment therefor plus ten (10) copies of the patent when issued.

Also, enclosed are an Amendment Pursuant to 37 C.F.R. § 1.312(a) (9 pages), and Comments on Statement of Reasons for Allowance (3 pages).

Applicant understands that no additional fees are required. However, if the Office determines that any comparison fees or other additional fees are required, the Commissioner is authorized to charge any such fees to TraskBritt Deposit Account No. 20-1469. A copy of this Transmittal Letter is enclosed for deposit account charging purposes.

Respectfully submitted,


Joseph A. Walkowski
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Telephone: 801-532-1922

Date: September 2, 2004
JAW/nj:lb

Enclosures: Part B - Issue Fee Transmittal
Check No. 20814 in the amount of \$995.00
Copy of Transmittal Letter
Amendment Pursuant to 37 C.F.R. § 1.312(a) (9 pages)
Comments on Statement of Reasons for Allowance (3 pages)

Document in ProLaw